

This is an appeal by claimant's second attorney, Bertica Dominguez-Calbi, for review of an award of attorney fees. The Administrative Law Judge ordered an equal division of attorney fees from a lump sum settlement award of permanent partial disability compensation notwithstanding that fees were previously collected by claimant's initial attorney out of the temporary total disability benefits claimant received as a result of said attorney's efforts.

Claimant received a lump sum settlement on April 1, 1994, in the amount of \$22,294.22. The controversy involves the division of attorney fees in the amount of \$5,573.56, representing twenty-five percent (25%) of the lump sum settlement.

On May 10, 1994, a Motion Hearing was held before Administrative Law Judge Steven J. Howard. The Court heard statements from claimant's initial attorney, Mr. Gary Jordan, and from claimant's subsequent and current attorney, Bertica Dominguez-Calbi. Ms. Dominguez-Calbi introduced as an exhibit her statement regarding attorney fees evidencing her having expended approximately sixty (60) hours in connection with her representation of claimant in this case. Judge Howard ordered Mr. Jordan to provide an itemization of his time which he did by likewise filing a statement regarding attorney fees. His statement indicated that he had expended approximately seventy (70) hours in the course of his legal representation of claimant.

Judge Howard found the \$5,573.56 representing twenty-five percent (25%) of the lump sum settlement to be a reasonable attorney fee and ordered it be split equally between counsel after payment of expenses. The Administrative Law Judge also ordered the costs of the Motion Hearing to be divided equally between counsel. Ms. Dominguez-Calbi disagrees with the findings of the Administrative Law Judge, arguing that Mr. Jordan's itemization of his time spent includes the time he expended getting temporary total disability compensation reinstated. Therefore, if he receives a separate fee from the temporary total disability compensation, as well as fifty percent (50%) of the fee from the lump sum settlement, this would represent a windfall. She proposes a fifty-fifty (50-50) split of all attorney fees, including the fee collected from the temporary total disability compensation.

The Appeals Board agrees with the approach taken by the Administrative Law Judge. The fees earned by claimant's initial attorney in obtaining for claimant a reinstatement of temporary total disability compensation through his efforts in filing for preliminary hearing, are to be considered separate and apart from the fees coming from the award of permanent partial disability compensation. K.S.A. 44-536. At the time claimant changed counsel, Mr. Jordan had the claimant's case in the posture for trial. A regular hearing, the deposition of claimant's medical expert and the deposition of the claimant's vocational expert were all set. Reports had been issued on the ultimate issues of functional impairment and work disability, a settlement offer had been made and claimant had been through a vocational rehabilitation assessment. It appears that both counsel expended approximately the same amount of time in the case, the efforts with respect to the temporary total disability benefits notwithstanding. Accordingly, an equal division of a twenty-five percent (25%) fee from the lump sum settlement is a reasonable amount for the respective efforts of counsel.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the May 31, 1994 Order of Administrative Law Judge Steven J. Howard be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1995.

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BOARD MEMBER

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BOARD MEMBER

cc: Gary L. Jordan, Ottawa, KS  
Bertica Dominguez-Calbi, Kansas City, MO  
Steven J. Howard, Administrative Law Judge  
George Gomez, Director